

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JO B. HENDERSON-STILL,

Plaintiff ,

vs.

CIVIL NO. 09-840 JH/LFG

QWEST CORPORATION,

Defendant.

**ORDER STRIKING PLEADINGS**

On April 20, 2010, the Court conducted a Fed. R. Civ. P. 16 settlement conference relating to Jo B. Henderson-Still's ("Henderson-Still") claims of employment discrimination. The settlement conference was successful and all matters relating to the litigation were fully and amicably resolved. The parties executed a Memorandum of Understanding outlining terms and conditions.

In accord with the parties' Memorandum of Understanding, a stipulated Fed. R. Civ. P. 41 dismissal with prejudice was entered on August 30, 2010 [Doc. 32]. The parties did not seek nor did the Court order a reservation of jurisdiction in this case.

On August 30, 2010, Henderson-Still filed a Notice of Non-Compliance [Doc. 33]. This Notice prompted various motions and cross-motions for summary judgment.

Ms. Henderson's pleadings, purportedly filed as a *pro se* litigant, were filed at a time when she was represented by counsel, Christopher N. Orton. A party is free to represent herself as a *pro se* litigant or to be represented by counsel. However, a party is not privileged to do both. 28 U.S.C. § 1654; United States v. Hill, 526 F.2d 1019, 1024-25 (10<sup>th</sup> Cir. 1975). The Court does not recognize hybrid representation.

On November 1, 2010, the Court conducted a Fed. R. Civ. P. 16 status conference to discuss the numerous post-settlement pleadings filed. Mr. Orton advised that he is still counsel of record, but has determined to withdraw as counsel for Henderson-Still. He did not authorize Henderson-Still to file pleadings.

The Court determines that it was improper for Henderson-Still to file her pleadings at a time when Mr. Orton remained as counsel. Those pleadings constitute improper filings, and they will be stricken from the record. The Court also will strike from the record all of Defendant's motions, responses and affidavits relating to Henderson-Still's pleadings.

Once Mr. Orton withdraws as counsel, Henderson-Still is free to represent herself as a *pro se* litigant or she may seek substitute counsel. The Court cautioned Henderson-Still that if her claim is that the Defendant breached a contract existing between her and Defendant, it would appear that the proper remedy is a breach-of-contract action filed in an appropriate state forum.

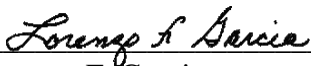
IT IS ORDERED that the following pleadings are stricken from the record:

1. Doc. 33 - Plaintiff's Notice of Non-Compliance, Motion to Enforce Agreement, Request for Summary Judgment and Relief.
2. Doc. 34 - Defendant's Response in Opposition to Notice of Noncompliance and Motion to Enforce, and Brief in Support of Its Cross Motion for Summary Judgment.
3. Doc. 35 - Defendant's Cross Motion For Summary Judgment on Plaintiff's Notice of Noncompliance and Motion to Enforce.
4. Doc. 36 - Defendant's Affidavit of Joan Timmerman re Cross Motion for Summary Judgment on Plaintiff's Notice of Noncompliance and Motion to Enforce.
5. Doc. 38 - Plaintiff's Response in Opposition to Defendant's Cross Motion for Summary Judgment.

6. Doc. 39 - Plaintiff's Amended Notice of Non-Compliance, Motion to Enforce Agreement and Request for Summary Judgment and Relief.

7. Doc. 40 - Affidavit of Jo B. Henderson-Still.

8. Doc. 42 - Defendant's Response in Opposition re Motion for Order and Reply in Support of Its Cross Motion for Summary Judgment.

  
\_\_\_\_\_  
Lorenzo F. Garcia  
United States Magistrate Judge